

**STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION  
Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 90535-001

v

Physicians Health Plan of Mid-Michigan  
Respondent

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Issued and entered  
this 13<sup>th</sup> day of August 2008  
by Ken Ross  
Commissioner

**ORDER**

**I  
PROCEDURAL BACKGROUND**

On June 23, 2008, XXXXX, on behalf of her minor daughter XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On June 30, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

This case required an analysis by a health care professional so the Commissioner assigned it to an independent review organization (IRO) which submitted its recommendation on July 17, 2008.

**II  
FACTUAL BACKGROUND**

The Petitioner is a member of Physicians Health Plan of Mid-Michigan (PHPMM) and her health benefits are defined in PHPMM's Certificate of Coverage (the certificate).

The Petitioner, through her oral surgeon, requested coverage for the surgical correction of a developmental dental facial deformity, i.e., orthognathic surgery. PHPMM denied the request. The Petitioner appealed and exhausted PHPMM's internal grievance process. PHPMM maintained its denial and sent a final adverse determination letter dated April 23, 2008.

### **III ISSUE**

Did PHPMM properly deny the Petitioner coverage for orthognathic surgery?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner argues that the surgery is medically necessary because her jaw deformity causes difficulty masticating (chewing) a normal diet and problems with deglutition (swallowing).

XXXXX, DDS, the Petitioner's oral surgeon, examined Petitioner and described the surgical procedures needed to correct the Petitioner's deformity:

[The Petitioner] presents with difficulty masticating a diet of normal consistency, which results in an inadequate deglutition for adequate digestion. In addition, the premature posterior occlusion due to the skeletal problem has resulted in excessive wear of the posterior teeth and potential periodontal compromise. The [Petitioner] has difficulty achieving lip closure and the open bite tendency has resulted in the patient being obligate mouth breather with desiccation of the oral and perioral tissue and the attendant inflammatory response. The significance of [the Petitioner's] skeletal dysgenesis is greater than II standard deviations from the normal skeletal and cephalometric normals. For the performance of surgical procedures in this patient's case, would be to improve mastication, thereby allowing for normal deglutition of food and difficulty with dietary intake.

Dr. XXXXX requested coverage for two procedures: an intraoral sagittal split osteotomy with mandibular ridge fixation and mandibular retraction (CPT code 21196) and a LeForte I osteotomy advancement with transpalatal expansion (CPT code 21142). He says the services are medically necessary to correct both developmental and functional dental facial deformities that have resulted in grossly impaired mastication and phonation. Dr. XXXXX also noted that

the Petitioner has attempted (and exhausted) all non-surgical treatment possibilities and it is the consensus of her providers that surgery is necessary.

The Petitioner argues that the requested services are for a medical not a dental problem and she wants PHPMM to cover the orthognathic surgery.

#### Respondent's Argument

In its final adverse determination letter to the Petitioner, PHPMM denied coverage for the orthognathic surgery, saying:

[B]ased on the clinical information we reviewed, [the Petitioner] does not meet [PHPMM's] policy criteria for coverage. [The Petitioner's] Body Mass Index (BMI) is within normal limits and there is no medical evidence of impairment of airway or nutrition. This decision is based on PHPMM's Care Coordination Benefit Determination Policy for Orthognathic Surgery.

PHPMM cited exclusions contained in "Section 2: What's Not Covered–Exclusions" of the certificate.

#### Commissioner's Review

The issue in this case is coverage for orthognathic surgery, the surgical repositioning of the maxilla, mandible, and the dentoalveolar segments to achieve facial and occlusal balance. It is used to treat various types of malocclusions and jaw deformities.

The Petitioner's certificate generally excludes dental services or treatment. However, orthognathic surgery is covered under the certificate and PHPMM's orthognathic surgery medical policy when certain criteria are met. The policy says:

PHPMM will cover orthognathic surgery from the medical benefit when provided by an in-network provider, with notification in advance, when established criteria is met, and approved by the Medical Director utilizing the following clinical determination guidelines. PHPMM considers orthognathic surgery medically necessary for correction of skeletal deformities of the maxilla or mandible when clinical documentation indicates:

- a) Skeletal deformities are contributing to medically significant functional impairment of airway or nutrition
- b) A medical as opposed to dental physiological functional impairment would be improved by orthognathic surgery

- c) Non-surgical treatment, such as dental therapeutics or orthodontics alone, have not adequately treated the condition

\* \* \*

### **Clinical Determination Guidelines**

The primary consideration is to establish the presence of a medical functional impairment due to skeletal malformation or anomaly of the maxilla and/or mandible.

### **Documentation requirements for skeletal deformities related to masticatory dysfunction:**

- a) a-c from Policy statement
- b) X-rays to confirm diagnosis/discrepancy
- c) BMI (body mass index)
- d) Medical evidence of malnutrition
- e) Models and photos

The Petitioner has argued that the services she is requesting are medical, not dental, in nature. Her oral surgeon, Dr. XXXXX, contends that the surgery is medically necessary. Dr. XXXXX noted that the Petitioner has a dental facial deformity that is greater than two standard deviations from normal and that the deformity not only causes pain but also difficulty chewing a normal diet, swallowing, posterior tooth sensitivity, and jaw instability at rest. Dr. XXXXX says the Petitioner also runs the risk of further problems because of mouth breathing.

To resolve the issue of medical necessity, the Commissioner asked for the recommendation of an IRO. The IRO reviewer is certified by the American Board of Oral and Maxillofacial Surgery; a fellow of the American Dental Society of Anesthesiology; a Diplomate of the National Dental Board of Anesthesiology; a fellow of the American Association of Oral and Maxillofacial Surgeons; and is an instructor at a university based school of medicine. The IRO reviewer is also published in peer reviewed medical literature and is in active practice.

The IRO reviewer examined the medical records and the certificate and PHPMM medical policy and concluded that the Petitioner's surgery is medically necessary. The IRO report explained:

[The Petitioner], by report has 'mandibular prognathia hyperplasia and maxillary retrognathia hypoplasia with constriction.' As such, successful correction requires orthognathic surgery as orthodontic therapy alone is not an adequate treatment. Not only is this procedure dentally necessary, but in most cases is considered medically necessary in order to properly align the bones of the facial skeleton, and henceforth the teeth, to allow for proper function of the masticatory system. In addition, correction of the skeletal abnormality may prevent temporomandibular joint disorders from occurring.

The IRO reviewer said that although the Petitioner's BMI is within normal range and she does not show signs of malnutrition, it does not mean that she does not have "masticatory dysfunction." The IRO report went on:

With the exception of infants with syndromic conditions, malnutrition almost never exists given the plethora of nutritional supplements available today. \* \* \* There are many instances where patients are unable to eat certain foods or even masticate foods properly when masticatory dysfunction and skeletal disharmony exists.

\* \* \* Clearly, [this Petitioner] has radiographs that easily illustrate the skeletal imbalance. As stated previously, the usage of BMI and malnutrition as requirements for approval is not appropriate in regards to modern medicine in this society.

The [Petitioner] has clearly met requirements b) and c) listed in the above noted policy statement. It is obvious from the plethora of letters and opinions provided for review in this case that more conservative therapy is not an option for [the Petitioner], given the severity of the skeletal dysfunction present.

Orthognathic surgery is a recognized treatment modality for correction of skeletal imbalance and its associated masticatory dysfunction. Often, orthodontic therapy alone cannot be utilized to bring the teeth and bones into alignment. Such is the case presented in [the Petitioner's] case. Without treatment, numerous problems could arise for [the Petitioner]. \* \*

The IRO reviewer further said:

Some of the general indications for orthognathic surgery according to the American Association of Oral and Maxillofacial Surgeons (AAOMS) Parameters of Care that pertain to this case are: Physical and radiographic evidence of musculoskeletal, dento-osseous, and/or soft-tissue deformity, malocclusion that cannot be reasonably corrected by nonsurgical means, masticatory abnormalities, and dental and/or periodontal pathology.

\* \* \*

It is this reviewer's recommendation that the denial of coverage for orthognathic surgery be overturned.

The Commissioner is not required in all instances to accept the IRO recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO analysis is based on extensive experience, expertise, and professional judgment. The Commissioner can discern no reason why the recommendation should be rejected in the present case. Therefore, the Commissioner accepts the findings of the IRO that that the orthognathic surgery requested by the Petitioner meets criteria for coverage.

## **V ORDER**

The Commissioner reverses PHPMM's April 23, 2008, final adverse determination. PHPMM is responsible for covering the Petitioner's orthognathic surgery under the terms and conditions of its certificate and related medical policy. PHPMM shall authorize coverage for the surgery and related services within 60 days of the date of this Order and shall, within seven days of providing coverage, provide the Commissioner with proof it has implemented the Commissioner's Order.

To enforce this Order, the Petitioner must report any complaint regarding the implementation of this Order to the Office of Financial and Insurance Regulation, Health Plans Division, toll free 877-999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner

of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.